

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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INNOVATIVE SPORTS MANAGEMENT,
d/b/a INTEGRATED SPORTS MEDIA,

Plaintiff,

v.

YIRCEO ZARATE, *Individually,*
and as Officer, director,
shareholder and/or Principal of
EL MORDISCO SPORTS BAR RESTAURANTE,
CORP., *and* EL MORDISCO SPORTS BAR
RESTAURANTE, CORP.,

Defendants.

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KIYO A. MATSUMOTO, United States District Judge:

On January 24, 2020, plaintiff Innovative Sports Management d/b/a Integrated Sports Media commenced this civil action against defendants Yirceo Zarate and El Mordisco Sports Bar Restaurante, Corp. ("El Mordisco") (collectively, the "defendants"), alleging defendants exhibited, without plaintiff's authorization, a soccer game on March 22, 2019 to which plaintiff owns the rights. (ECF No. 1, Complaint ("Compl.") ¶¶ 3-5.) Plaintiff alleges that defendants' actions infringed upon its copyright, in violation of 17 U.S.C. § 501. (*Id.* ¶ 34.)

After defendants were properly served with process (see ECF Nos. 8, 9) and failed to appear, respond to the

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

20-cv-405 (KAM) (LB)

complaint, or otherwise defend this action, plaintiff sought, pursuant to Federal Rule of Civil Procedure Rule 55(a), entry of default against defendants. (ECF No. 11, Plaintiff's Request for Entry of Default.) On August 14, 2020, the Clerk of the Court entered a certificate of default against defendants. (ECF. No. 12, Clerk's Entry of Default.) On November 6, 2020, plaintiff moved for a default judgment against defendants on its claim for copyright infringement. (ECF No. 13, Plaintiff's Motion for Default Judgment.)

Presently before the court is plaintiff's motion for default judgment, which the court referred to Magistrate Judge Lois Bloom for a Report and Recommendation. (Dkt. Order 4/1/2021.) On August 5, 2021, Judge Bloom issued a well-reasoned Report and Recommendation in which she recommended that plaintiff's motion for default judgment be granted in part and denied in part and that plaintiff be awarded \$3,000 in statutory damages against El Mordisco under 17 U.S.C. § 504(c)(1), and enhanced statutory damages of \$3,000 against El Mordisco under 17 U.S.C. § 504(c)(2) for a total award of \$6,000, and \$0 against Yirceo Zarate. (ECF No. 14, Report and Recommendation ("R&R"), at 1, 15.) Judge Bloom also recommended that plaintiff's motion for attorney's fees be denied without prejudice. (*Id.* at 14-15.) The court assumes familiarity with

the factual and procedural history as set forth in the R&R.
(*Id.* at 2-3.)

The R&R notified the parties of the right to file written objections within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). (R&R at 15-16.) Plaintiff served a copy of Judge Bloom's R&R by first class mail to defendants and filed a certificate of service confirming service on August 12, 2021. (See ECF No. 15, Certificate of Service.) The period for filing objections has now lapsed, and no objections to the R&R have been filed.

In reviewing a R&R, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). Where no objection to the R&R has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted)).

Upon careful review of the R&R, the court finds no clear error in Judge Bloom's thorough and well-reasoned R&R and hereby affirms and adopts the R&R as the opinion of the court pursuant to 28 U.S.C. § 636(b)(1). Specifically, the court

agrees with Judge Bloom's finding that the complaint sufficiently establishes the corporate defendant El Mordisco's liability for copyright infringement. (R&R at 6-7.) Similarly, the court also agrees that the complaint insufficiently alleged facts showing individual defendant Zarate's contributory infringement because the complaint failed to allege that Zarate authorized the infringing use or was even present at El Mordisco at the time the infringement occurred. (*Id.* at 8-10.) As to damages, the court also agrees with Judge Bloom's determination that an award of \$3,000 in statutory damages (three times the lost licensing fee) and \$3,000 in enhanced statutory damages is typical and appropriate in this Circuit. (*Id.* at 11-14.) Finally, as to attorneys' fees, the court agrees that plaintiff's counsel's request for attorneys' fees and costs is unsupported by the record and should be denied without prejudice to the refiling of a proper application for attorneys' fees supported by adequate documentation. (*Id.* at 14-15.)

Accordingly, for the reasons set forth above and based upon the findings of fact and conclusions of law set forth in the R&R and adopted herein, plaintiff's motion for default judgment is granted in part and denied in part. Defendant El Mordisco is found to be liable. Judgment in the amount of \$6,000.00 should be entered against the defendant El Mordisco as follows:

- (1) \$3,000.00 for El Mordisco's violation of the Copyright Act;
- (2) \$3,000.00 in enhanced damages for El Mordisco's violation of the Copyright Act; and
- (3) \$0 in damages against Yirceo Zarate.

The Clerk of the Court is respectfully directed to enter judgment in favor of plaintiff and against El Mordisco in the total amount of \$6,000.00, and \$0 against Yirceo Zarate. Plaintiff is directed to serve a copy of this Order on defendants and file proof of service on ECF within seven (7) days from the date of this Order. Plaintiff shall submit a complete application for attorneys' fees and costs supported by adequate documentation within fourteen (14) days from the date of this Order.

SO ORDERED.

/s/
KIYO A. MATSUMOTO
United States District Judge
Eastern District of New York

Dated: August 30, 2021
Brooklyn, New York